

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL COAST REGION**

**In the matter of:**

**Bardex Corporation**

**6338 Lindmar Drive**

**Goleta, CA**

**Complaint No. R3-2008-0037**

**Administrative Civil Liability**

**For**

**Violations of**

**California Water Code Section 13267**

**BARDEX CORPORATION IS HEREBY GIVEN NOTICE:**

Bardex Corporation (Discharger) is alleged to have violated provisions of law and Orders of the Regional Water Quality Control Board, Central Coast Region (Central Coast Water Board), for which the Water Board may impose civil liability pursuant to Section 13268 of the California Water Code.

Unless the Discharger waives its right to a hearing, the Central Coast Water Board will hold a public hearing on this matter within 90 days of the Discharger's receipt of this Administrative Civil Liability Complaint (Complaint). The Discharger and/or the Discharger's representative(s) will have the opportunity to be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Central Coast Water Board. A public hearing is tentatively scheduled for October 16-17, 2008, in Santa Barbara.

Staff will mail the Discharger an agenda not less than ten days before the hearing date. At the hearing, the Central Coast Water Board will consider whether to affirm, reject, decrease, or increase the proposed administrative civil liability, whether to refer the matter to the State Attorney General to recover civil liability judicially, or whether to take any other appropriate action as a result of the hearing.

**ALLEGATIONS**

1. The Discharger is the owner/operator of a global business specializing in the design, manufacture, and installation of heavy load handling, positioning, mooring, and tensioning systems principally for the offshore oil

& gas and shipyard industries. The Discharger's 120,000 square foot corporate office and manufacturing headquarters is located at 6338 Lindmar Drive, Goleta, California, in Santa Barbara County. Facility processes include machining, assembly, and painting, requiring the use of solvents. The Discharger also has facilities in Houston, Texas, and the United Kingdom, and has been in business since 1963.

2. Pollutant discharges at the facility have degraded soil and groundwater. Groundwater continues to be degraded because the Discharger has not completed the cleanup required by the Central Coast Water Board.
3. Pollutant discharges to surface waters or conveyances thereto from the facility flow into Carneros Creek, which is tributary to Goleta Slough and the Pacific Ocean.
4. This Complaint alleges that the Discharger has failed to submit technical reports required in two separate Cleanup and Abatement Orders, and one California Water Code Section 13267 Order. These three orders relate to the Central Coast Water Board's requirements that the Discharger clean up its hazardous compound spills to soil and groundwater, and that it cease discharges of contaminated groundwater to surface waters.
5. On March 11, 2008, Central Coast Water Board staff mailed a Notice of Violation to the Discharger describing the violations alleged in this complaint, the associated maximum liabilities, and the Water Board's authority to impose monetary liability.
6. On April 21, 2004, the Central Coast Water Board Executive Officer issued Cleanup and Abatement Order No. R3-2004-0063, requiring Bardex Corporation to clean up tetrachloroethene (PCE), trichloroethylene (TCE), and related hazardous compounds discharged to soil and groundwater from its facility located at 6338 Lindmar Drive in Goleta, California. Requirement No. 3 of that Order arranged for the future establishment of a due date for the Discharger to submit a corrective action plan for the complete cleanup of PCE, TCE, and related hazardous compounds.

By letter dated October 31, 2007, the Executive Officer required the corrective action plan no later than December 15, 2007. The Discharger failed to provide the corrective action plan by the due date, thereby violating Water Code Section 13267. On March 20, 2008, the Discharger submitted its corrective action plan 96 days late.

7. By letter dated October 31, 2007, the Central Coast Water Board Executive Officer required the Discharger to submit a work plan delineating TCE in groundwater downgradient of the facility. The Discharger's work plan was due no later than December 15, 2007. The Discharger failed to provide the

work plan by the due date, thereby violating Water Code Section 13267. On March 20, 2008, the Discharger submitted its TCE delineation workplan 96 days late.

8. By letter dated October 31, 2007, the Central Coast Water Board Executive Officer required the Discharger to submit a mailing list for surrounding property owners and residents/occupants. The mailing list is required to notify neighbors of the proposed cleanup activities. The Discharger's mailing list was due no later than December 15, 2007. The Discharger failed to provide the mailing list by the due date, thereby violating Water Code Section 13267. On March 20, 2008, the Discharger submitted its mailing list 96 days late.
9. By letter dated October 31, 2007, the Central Coast Water Board Executive Officer required the Discharger to submit a letter stating that it had uploaded all required technical reports to the State Water Resources Control Board's Geotracker database. The Discharger is required to upload technical reports to Geotracker in accordance with Title 23, Division 3, Chapter 30, Articles 1 and 2, Sections 3890 through 3895 of the California Code of Regulations. The Discharger's letter was due no later than November 30, 2007. The Discharger failed to provide the letter by the due date, thereby violating Water Code Section 13267. On March 20, 2008, the Discharger submitted its letter confirming that the Discharger uploaded technical reports to Geotracker 111 days late.
10. On January 10, 2008, the Central Coast Water Board Executive Officer issued Cleanup and Abatement Order No. R3-2007-0087, requiring Bardex Corporation to eliminate the discharge of polluted groundwater originating from its facility to storm drains or any other conveyances to surface waters. The Order requires the Discharger to submit a report no later than February 22, 2008, detailing how it intends to meet the requirements. The Discharger failed to provide the report by the due date, thereby violating Water Code Section 13267. On March 20, 2008, the Discharger submitted its report 27 days late.
11. Violations of reporting requirements made pursuant to California Water Code Section 13267 subject the Discharger to liability under California Water Code Section 13268.
12. Water Code Section 13268 states that any person failing to furnish technical or monitoring program reports as required by Section 13267 is guilty of a misdemeanor and may be liable civilly for up to \$1,000 for each day in which the violation occurs.

13. The above allegations indicate the Discharger violated Water Code Section 13267 for 426 days, and is therefore subject to a maximum civil liability of \$426,000 pursuant to Water Code Section 13268.

### PROPOSED CIVIL LIABILITY

In determining any liability to be imposed, California Water Code Section 13327 requires the Central Coast Water Board to consider the following factors and any other factors as justice may require:

- a. **Nature, circumstances, extent, and gravity of the violations:** The Discharger violated CAO No. R3-2004-0063, the Central Coast Water Board's October 31, 2007 Water Code Section 13267 Order, and CAO No. R3-2007-0087 by failing to submit required information and technical reports necessary for the protection of water quality. Central Coast Water Board staff transmitted each of the documents to the Discharger by certified mail, and received correspondence from the Discharger acknowledging its receipt of those documents. The Discharger violated the requirements of these orders for 426 days. These orders relate to chronic discharges of hazardous compounds to groundwater and surface waters, and the Discharger's compliance with reporting requirements is necessary to facilitate the review and approval of planning documents, to allow cleanup activities to progress to compliance, to notify the public about cleanup activities in their neighborhood, to provide analytical data for Central Coast Water Board and public review and evaluation of soil and groundwater impacts, and to confirm the abatement of the pollutant discharges.

Staff considers the reporting violations serious because they resulted in a delay of staff's review and approval of planning documents required to implement cleanup activities and stop unauthorized waste discharges to surface waters. As a result of the violations, the Discharger delayed cleanup activities at the site.

This consideration warrants less than the maximum liability because the reporting violations, while serious, do not warrant the amount of maximum liability applicable in this case.

- b. **Discharge susceptibility to cleanup or abatement:** This Complaint recommends enforcement action for reporting violations directly related to pollutant discharges that are susceptible to cleanup and abatement.

This consideration does not warrant less than the maximum liability because the Discharger's failure to comply with reporting requirements prevents the cleanup and abatement of pollutant discharges to waters of the state.

- c. **Discharge toxicity:** This Complaint recommends enforcement action for reporting violations directly related to pollutant discharges of toxic materials to waters of the state.

This consideration does not warrant less than the maximum liability because the Discharger's failure to comply with reporting requirements extends the exposure of waters of the state to toxic compounds.

- d. **Discharger's Ability to Pay the Liability, and the Effect on the Discharger's Ability to Continue Business:** The Discharger has the apparent ability to pay because it operates a private, global business specializing in the design, manufacture, and installation of heavy load handling, positioning, mooring, and tensioning systems principally for the offshore oil & gas and shipyard industries. The Discharger's assets include a 120,000-square foot corporate office and manufacturing headquarters in Goleta, California, and other facilities in Houston, Texas, and the United Kingdom. The Discharger has been in business since 1963. The Discharger has submitted no information to indicate it is unable to pay the recommended liability, or that paying the liability would affect its ability to continue in business.

This consideration does not warrant less than the maximum liability.

- e. **Violation history:** The reporting violations that the Discharger is alleged to have violated are related to its previous violations for discharging TCE, PCE, and other related hazardous compounds to waters of the state. In addition, the Central Coast Water Board penalized the Discharger \$900 on May 14, 2004, for its failure to comply with reporting requirements (Administrative Civil Liability Order No. R3-2004-0061).

Although this is the Central Coast Water Board's second formal enforcement action for the Discharger's violation of reporting requirements, the above consideration warrants less than the maximum liability because the reporting violations, while serious, do not warrant the amount of maximum liability applicable in this case.

- f. **Voluntary cleanup efforts:** This consideration does not apply to the Discharger's reporting violations. This factor is neutral with respect to liability, because there were no voluntary cleanup activities.
- g. **Degree of culpability:** As the owner of the regulated facility, the Discharger is responsible for compliance, and has the highest degree of culpability. The Discharger received the reporting requirements by certified mail, acknowledged its receipt in subsequent correspondence, and was therefore aware of the reporting requirements.

This consideration does not warrant less than the maximum liability.

- h. **Economic benefit or savings:** During the period of violation addressed by this complaint, the Discharger potentially realized economic benefit or savings by failing to expend resources to compile the required technical data for the reports, and to prepare the reports for submittal. However, the Discharger is still required to conduct all tasks related to complying with the reporting requirements. Staff therefore presumes the Discharger has realized economic benefit only by delaying expenditures to comply with the reporting requirements.

Given the above consideration, it is reasonable to conclude that staff's recommended civil liability recovers the Discharger's economic benefit derived from the alleged violations.

- i. **Other matters as justice may require:** Central Coast Water Board staff spent time preparing and reviewing documents related to this enforcement action. Estimated staff costs (including Central Coast Water Board technical staff, administrative staff, supervisors, and legal counsel) are six thousand dollars (\$6,000).

$$\$125/\text{hour} \times 48 \text{ hours} = \$6,000$$

## RECOMMENDATION

The following table summarizes the maximum liability for each allegation.

<b>Allegation No.</b>	<b>Daily Violations</b>	<b>Max. Liability per Daily Violation</b>	<b>Max. Liability</b>
6	96	\$1,000	\$96,000
7	96	\$1,000	\$96,000
8	96	\$1,000	\$96,000
9	111	\$1,000	\$111,000
10	27	\$1,000	\$27,000
<b>Total Maximum Liability</b>			<b>\$426,000</b>

**Maximum Liability** – Pursuant to California Water Code Section 13268, the Central Coast Water Board can impose civil liability for up to one thousand dollars (\$1,000) per day for each violation of Water Code Section 13267. The Discharger violated Water Code Section 13267 multiple times from November 30, 2007, through March 20, 2008. Per the above allegations, 426 violations are subject to the maximum civil liability of \$1,000 per day per violation. The

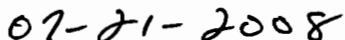
maximum liability the Central Coast Water Board may impose on the Discharger is therefore **four hundred and twenty-six thousand dollars (\$426,000)**.

**Minimum Liability** – California Water Code Section 13327, in establishing the factors for consideration in determining civil liability for violations of Water Code Section 13267, does not specify a minimum liability.

Upon consideration of factors as required by California Water Code Section 13327, the Assistant Executive Officer recommends civil liability in the amount of **twenty-five thousand dollars (\$25,000)** for the Discharger's violations of CAO No. R3-2004-0063, the Central Coast Water Board's October 31, 2007 Water Code Section 13267 Order, CAO No. R3-2007-0087, and California Water Code Section 13267.



Michael J. Thomas  
Assistant Executive Officer



Date

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